

**ORIGINAL**

Decision No. 47082

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
A. D. Wooley and R. E. Wooley, co-  
partners doing business as Western  
Transport Company and Peninsula Motor  
Express, a corporation, for approval  
of establishment of joint through  
rates and through routes between Los  
Angeles territory and San Francisco  
and intermediate points between San  
Francisco and Palo Alto.

Application No. 32725

In the Matter of the Application of  
A. D. Wooley and R. E. Wooley, co-  
partners doing business as Western  
Transport Company, and Merchants  
Express Corporation, a corporation,  
for approval of establishment of joint  
through rates and through routes be-  
tween Los Angeles territory and points  
in Northern California.

Application No. 32852

In the Matter of the Application of  
A. D. Wooley and R. E. Wooley, co-  
partners doing business as Western  
Transport Company and Highway Trans-  
port, Inc., a corporation, for ap-  
proval of establishment of joint  
through rates and through routes be-  
tween Los Angeles territory and  
points in San Benito, Santa Cruz and  
Monterey Counties.

Application No. 33009

Appearances

- Scott Elder, for applicants.
- Douglas Brookman, for California Motor Express, Ltd., Gordon, Knapp & Gill, by Wyman C. Knapp, for Pacific Freight Lines and Pacific Freight Lines Express, and Robert W. Walker and Matthew W. Witteman for The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Transportation Company, protestants.
- C. A. Millen, for Valley Express Company, and Jack F. Kueper, for Associated Freight Lines, interested parties.

O P I N I O N

A. D. Wooley and R. E. Wooley, copartners doing business as Western Transport Company (hereinafter referred to as Western Transport), operate as a highway common carrier of general commodities. The operative rights and tariff rates are limited to transportation between the Los Angeles metropolitan area and the Santa Clara Valley territory. The latter includes points as far north as Palo Alto and as far south as Gilroy.<sup>1</sup> In these applications, Western Transport seeks authority to establish joint rates for through transportation between the Los Angeles area and points beyond the Santa Clara Valley territory on the routes of the other highway common carrier applicants as follows: (1) points north of Palo Alto to and including San Francisco served by Peninsula Motor Express; (2) points in the territory generally bounded by Healdsburg, Calistoga, Redding, Sacramento, Stockton, Livermore and San Jose served by Merchants Express Corporation, except points situated in Alameda, San Francisco, San Mateo and Santa Clara Counties; and (3) points in Monterey, San Benito and Santa Cruz Counties served by Highway Transport, Inc. The traffic would be interchanged at San Jose.

The applications were consolidated for convenience of hearing and decision. Public hearing of the matters was held at San Francisco before Examiner Jacopi.<sup>2</sup> They will be disposed of

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The Los Angeles metropolitan area and the Santa Clara Valley territory between which service may be provided are described in Appendices "C" and "G" of Decision No. 43003 (48 Cal.P.U.C. 712 (1949)).

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The hearing was held on January 8, 1952. An adjourned hearing was scheduled for January 28, 1952, for receipt of protestants' evidence. Prior to the latter date, this evidence was submitted by written stipulation between protestants and applicants. The matters were removed from the Commission's calendar and were taken under submission upon the filing, on February 15, 1952, of written memoranda of points and argument by the parties.

in one decision.

The record shows that transportation over applicants' lines between the points involved is subject to combinations of their local rates. The combination rates are higher than the local or joint rates applicable for through movements by competing common carriers. The combination rates also exceed the established minimum rates for through transportation by radial highway common and highway contract carriers. Applicants propose to establish joint rates that are on the level of the minimum class rates named in Highway Carriers' Tariff No. 2, except that rates equivalent to the 5th class through Class E truckload rates named in the tariff would not be maintained. As so limited, the proposed joint rates would be generally on the same level as the rates of competing common carriers and the minimum rates of permitted carriers for similar movements.

Evidence in support of the applications was offered by the general manager of Western Transport and by two shipper witnesses. The general manager testified that the disparity of rates referred to had placed his company at a disadvantage in obtaining traffic. He explained that shippers in the Los Angeles territory also make shipments to points situated beyond the Santa Clara Valley territory served by Western Transport. Assertedly, the shippers will not forward the beyond shipments under applicants' combination rates when lower through rates are offered by competing common and permitted carriers. The witness said that Western Transport had accepted beyond shipments in the past from various shippers but thereafter such movements were not offered to it because of the disparity of rates. He said that his company's Los Angeles office continually has received requests from shippers for the establishment of joint rates as herein proposed. The witness

asserted that such rates were needed to enable Western Transport to provide the full service demanded by the Los Angeles shippers it serves.

The general manager further testified that the rate disparity to the beyond points had resulted in loss of business moving under local rates between Los Angeles and points on the line of Western Transport. The witness stated that shippers were not inclined to segregate shipments according to the operative rights of the carriers and that they preferred to give all shipments destined to points in the same general area to the carrier serving all or the greatest portion thereof. He pointed out that his company is authorized to operate between the Los Angeles area and points only as far north as Palo Alto whereas competing common and permitted carriers operate into San Francisco and also serve San Jose and other intermediate points on the line of Western Transport. Assertedly, San Jose shipments usually handled by Western Transport have been given by shippers to the competitors because of the latter's ability to accept beyond shipments as well. The witness stated that competing common carriers now maintain local or joint rates to many of the beyond points involved in applicants' proposals. He maintained that it was not possible to determine the amount of local traffic that had been lost to the competitors.

According to the general manager, applicants' facilities are sufficient to handle the additional traffic that might be developed upon the establishment of the joint rates. Western Transport now provides 7 trips per day in each direction between the Los Angeles area and the Santa Clara Valley territory. About 50 percent of the loading capacity of the equipment is being utilized on the northbound trips and from 75 to 80 percent on the southbound movements. The witness anticipated that the establishment of joint

rates as proposed would result in improvement of the load factor. He said that the other applicants also were in position to handle additional traffic.

Two shipper witnesses testified in support of the joint rate proposals. The assistant to the traffic manager of a company engaged in the packing and distribution of dried fruit and nuts and in the milling of rice products said that shipments to points in southern California normally were made from the company's plants in San Francisco and Oakland. Occasionally, less truckload shipments move from the plants at Sebastopol, Yuba City, Chico and Biggs. The witness said that the proposed joint rates, if lower than the combination rates, would facilitate serving the Los Angeles area from the latter plants. He said, however, that the amount of traffic now moving from such plants would not be increased because of the availability of the proposed joint rates. The witness asserted that Western Transport has provided prompt and efficient service to his company between Los Angeles and the San Francisco Bay area and that its participation in joint rates from or to the points in question was desirable.

The traffic manager of a manufacturer of pharmaceuticals, intravenous solutions and blood plasma equipment situated in Glendale said that his company makes daily shipments to hospitals and blood banks. He stated that Western Transport provided excellent service on his shipments between Glendale and San Jose. Other carriers have been used for shipments to points generally north of Sacramento, such as Woodland, Marysville, Yuba City, Chico, Redding and Red Bluff. At times, from three to five days have been required for these movements. The witness said that the second day delivery contemplated by applicants under the joint rate proposals was

needed by his company. On shipments to Carmel and other points in the Monterey area, rail service now is being used. Assertedly, the proposed through services would be advantageous to his company. According to the witness, the platform space at the company's plant is small and he prefers to have a limited number of carriers handling the inbound and outbound traffic. He has found it convenient to give San Jose traffic as well as beyond shipments to one carrier serving all of the points rather than to segregate the consignments and to ship them by different carriers. The witness said that he had used the services of two of the protestants herein and had found them unsatisfactory for the particular movements.

The granting of the applications was opposed by California Motor Express, Ltd., Pacific Freight Lines, Pacific Freight Lines Express, Santa Fe Transportation Company, Valley Express Co. and Valley Motor Lines, Inc.<sup>3</sup> The record shows that protestants serve extensive territories in California, including operations between the Los Angeles and the San Francisco metropolitan areas.<sup>4</sup> The latter operations include some of the points involved in applicants' joint rate proposals. Overnight service is provided Monday through Friday. Upon request, the service is accorded on Saturday. Valley Express and Valley Motor Lines also operate the overnight service to points as far north as Chico for which applicants seek joint rates. The protestants maintained that adequate service is provided to all points on their routes, including those involved herein. Assertedly, the equipment operated by protestants on their routes

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<sup>3</sup> California Motor Express, Ltd., protested against the granting of Applications Nos. 32725 and 33009 only.

<sup>4</sup> Collectively, the foregoing protestants operate more than 2,400 units of equipment of various types in providing their services.

is not being used to its loading capacity and they are in position to accommodate additional traffic. In addition, Pacific Freight Lines pointed out that it has before the Commission Application No. 32432 for a certificate of public convenience and necessity under which it is proposed, among other things, to operate through highway common carrier service between Los Angeles and points in the Monterey territory and other points on the line of Highway Transport, Inc., one of the applicants in the instant proceedings.

Counsel for applicants argues that the joint rate proposals herein are defensive measures designed to stem the loss of Western Transport's local traffic to its competitors. Assertedly, the protestants are among the competitors who solicit the local traffic from shippers using Western Transport's service on the basis of their ability to serve larger territories. The counsel points out that the efficiency of the company's local service was acknowledged on the record. He contends that its earning position and its ability to continue the present service standards are being weakened to a critical degree by the rate disadvantage hereinbefore described. The counsel also points out that the Commission, in Decision No. 45784 of May 29, 1951, in re Joint Rates of Savage Transportation Co. and Willig Transportation Co. (50 Cal. P.U.C.645, 648), held that in dealing with proposals of highway common carriers to establish joint rates and through routes it is sufficient to find that the authority sought is not adverse to the public interest as a condition precedent to the granting thereof. He maintains that the evidence of record supports such a finding. The counsel asserts that other highway common carriers since have been authorized to establish joint rates which "are now in effect in some of the very territories involved in these proceedings and that the carriers are

operating under them in competition with applicants."

The protestants contend that applicants have failed to make even a prima facie case in support of their proposals. They point out that the witness for Western Transport was unable to state the amount of local traffic, nor to indicate any particular traffic, that had been lost to competitors who maintain through local or joint rates that are lower than applicants' combination rates. As shown by the record, protestants state, the two shippers who supported the application have only a small amount of traffic to move over the proposed through routes. It is pointed out that the decision in the Savage-Willig proceedings, supra, stated that if proposed joint rates and through routes should, in the Commission's opinion, prejudicially affect the lawful interests of other carriers without resulting in benefit to the public outweighing any such prejudice, the Commission could well find that the requested authority was adverse to the public interest. The protestants argue that since the record shows that applicants expect to divert traffic from competing carriers it is incumbent upon the applicants to show that this would not adversely affect the competitors.

The record made in these proceedings has been carefully considered. It shows that the lack of joint rates and through routes serves to handicap Western Transport in performing the service desired by some of its shippers. The other applicants herein now maintain joint rates with various highway common carriers who compete with Western Transport. Shippers who prefer to use the latter's service in conjunction with that of the other applicants are penalized to the extent of paying charges higher than those applicable via the competing joint routes and also via permitted carriers.



In the circumstances, it appears that the proposed establishment of joint rates is not adverse to the public interest and is justified. Applicants have requested authority to depart from the long and short haul provisions of the Constitution and of the Public Utilities Code to the extent necessary to establish the rates proposed in Applications Nos. 32852 and 33009. These requests appear justified. The three applications involved herein will be granted.

O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that applicants be and they are hereby authorized, within ninety (90) days after the effective date of this order, to establish and make effective the joint through highway common carrier rates as proposed in Applications Nos. 32725, 32852 and 33009 filed in these proceedings and to depart from the provisions of Article XII, Section 21, of the Constitution of the State of California and Section 460 of the Public Utilities Code to the extent necessary to establish the rates proposed in Applications Nos. 32852 and 33009 and authorized herein.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 29th day of

April, 1952.

R. J. Zimmerman  
President  
Harold P. Heals  
Benjamin P. Patten  
John E. Mitchell

Commissioners